

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KATHRYN NOBLE,

Plaintiff,

v.

FEDERAL EXPRESS  
CORPORATION, et al.,

Defendants.

NO. C11-1062 TEH

ORDER RE: DEFENDANT'S  
MOTION FOR JUDGMENT ON  
THE PLEADINGS

This matter comes before the Court on a motion for judgment on the pleadings filed by Defendant Federal Express Corporation ("FedEx"). FedEx moves for judgment based on Plaintiff Kathryn Noble's failure to include this lawsuit in her filings for Chapter 13 bankruptcy. Since the motion was filed, Noble has received leave from the bankruptcy court to amend her bankruptcy filings and also to pursue this lawsuit.<sup>1</sup> The parties shall meet and confer on whether the bankruptcy court's October 14, 2011 order alleviates FedEx's concerns about standing.

In addition, the Court advises the parties that it is inclined to follow the outcome reached in *Cannata v. Wyndham Worldwide Corp.*, Case No. 2:10-CV-00068-PMP-LRL, 2011 WL 2910112 (D. Nev. July 21, 2011). That court did not judicially estop the plaintiff from pursuing her discrimination claims, but it did "limit any potential award of damages to the amount necessary for the repayment of creditors as determined by the chapter 7 estate trustee" such that the plaintiff "will receive nothing." *Id.* at \*9. This solution would appear to strike an appropriate balance of equities, and the parties shall meet and confer on whether this is an acceptable outcome in this case. If the parties agree, or can agree on an alternate

<sup>1</sup>The Court takes judicial notice of the documents filed in the bankruptcy court pursuant to Federal Rule of Civil Procedure 201. The Court does not, however, take judicial notice of these documents for the truth of any matter asserted in Noble's bankruptcy filings.

1 resolution, then they shall file an appropriate stipulation and proposed order resolving  
2 FedEx's pending motion. If they cannot reach agreement, then they shall file a joint  
3 supplemental brief setting forth their respective positions, including citations to legal  
4 authority as to why proceeding in this manner would be reversible error. The parties shall  
5 file their stipulation and proposed order or joint supplemental brief on or before **October 31,**  
6 **2011.**

7  
8 **IT IS SO ORDERED.**

9  
10 Dated: 10/20/11



THELTON E. HENDERSON, JUDGE  
UNITED STATES DISTRICT COURT